

**DEPARTMENT OF LABOR AND TRAINING
DIVISION OF WORKFORCE REGULATION
AND SAFETY
OCCUPATIONAL SAFETY UNIT
PERFORMANCE AUDIT
FEBRUARY 2004**

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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DEPARTMENT OF LABOR AND TRAINING
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EXECUTIVE SUMMARY

The Occupational Safety Unit is not providing employers who request a hearing before the Occupational Safety and Health Review Board with a hearing forum in a reasonable timeframe.

Management within the Elevator Section has begun renewing certificates of elevator inspections on elevators and devices without performing legally-accepted or code-accepted inspections. Previously, the Section had always required a legal inspection to be performed before renewing a certificate. Although there are conflicting points of law regarding the appropriateness of this certificate renewal practice by the Section, there is a clear violation of the Safety Code for Elevators and Escalators occurring. Management needs to document the reasoning for the significant change in doctrine of the requirements for certificate renewal.

There is a clear and prevalent pattern present of safety code violations by elevator owners and among the majority of the employers subject to the provisions of the Right-To-Know Act. At the present time, the Division does not assess a penalty to violators of the provisions. Management needs to develop policies and procedures to receive, examine, proceed upon, and assess penalties on violators.

The Department needs to review Chapter 28-21 of the Rhode Island General Laws as it applies to the Hazardous Substance Right-To-Know Act. The legislation creates a permanent commission on hazardous substances and requires the commission to periodically review the list of designated hazardous/toxic substances. The commission has not convened since 1987 nor has the list been reviewed since 1985.

In 1976 Rhode Island received a cache of highly sophisticated and precise weights, standards, and measuring devices from the federal government. Due to their high value and exclusivity, the storage and maintenance requirements for these standards are stringent. The

Department has lost control over the storage and accountability of the standards resulting in inadequate security and preservation of those standards.

There is a section within the Occupational Unit that is unrelated to any other function or program within the Unit or the Division. It operates as a component of a completely separate autonomous body known as the Rhode Island State Emergency Response Commission (the Commission). Three separate departments are implementing the functions of the Commission, which appears to be an inefficient manner by which to function. It would appear reasonable to have as many of the provisions being implemented by the Commission under the responsibility of the fewest departments as possible.

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February 13, 2004

Mr. Marvin D. Perry, Acting Director
Department of Labor and Training
1511 Pontiac Avenue
Cranston, RI 02920

Dear Mr. Perry:

We have completed our performance audit of the Department of Labor and Training, Division of Workforce Regulation and Safety, Occupational Safety Unit as of July 2003. Our audit was conducted in accordance with Sections 35-7-3 and 35-7-4 of the Rhode Island General Laws.

The findings and recommendations included herein have been discussed with management and we have considered their comments in the preparation of the report. Management's response to our recommendations is included in this report.

In accordance with Section 35-7-4 of the Rhode Island General Laws, we will review the status of the Department of Labor and Training, Division of Workforce Regulation and Safety, Occupational Safety Unit's corrective action plan within six months from the date of issue of this report.

Sincerely,

Frank J. Collaro, Jr., CFE, CGFM
Acting Chief, Bureau of Audits

FJC:pp

DEPARTMENT OF LABOR AND TRAINING
DIVISION OF WORKFORCE REGULATION AND SAFETY
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INTRODUCTION

Objectives, Scope, and Methodology

We conducted a performance audit of the Department of Labor and Training, Division of Workforce Regulation and Safety, Occupational Safety Unit. Our objectives were to determine if the Division of Workforce Regulation and Safety, Occupational Safety Unit complied with state laws and regulations and was implementing its numerous programs that are intended to promote a safe, competitive, and fair environment to work and to conduct business in our state in an economical and efficient manner.

Our audit was made in accordance with the *Standards for the Professional Practice of Internal Auditing* issued by the Institute of Internal Auditors. In conducting our audit, we evaluated the practices and procedures used by the Division of Workforce Regulation and Safety, Occupational Safety Unit in administering its operations. Our purpose was to identify practices and procedures that could be improved or made more efficient, and to identify any significant non-compliance with applicable state or federal laws. To achieve our objectives, we reviewed relevant policies and procedures, state laws and regulations, and applicable federal laws; interviewed responsible personnel; and performed tests of the records and such auditing procedures as we considered necessary in the circumstances.

The findings and recommendations included herein have been discussed with management and we have considered their comments in the preparation of our report. Section 35-7-4 (c) of the Rhode Island General Laws requires the auditee to respond in writing within 60 days to all recommendations made in the report. Management's response to our audit findings and recommendations were submitted on February 12, 2004, and are included in our report.

Background

The Occupational Safety Unit safeguards public and private sectors' workplace environment by enforcing laws relating to safety compliance, elevators, boilers, and hazardous and extremely hazardous substances. Enforcement is administered through six sections within the Unit.

Safety Compliance: This Section enforces the Federal Occupational Safety and Health Administration (OSHA) standards for workers in the public and private sectors within the state.

Elevator Section: Responsibility for the registration, inspection, installation, permit procedures, accident reporting, and injury investigations of elevators, escalators, wheelchair lifts, and any lifting or lowering mechanism moving on fixed guides fall within the Elevator Section. The Section also administers the program of testing and licensing elevator lifting device mechanics and licensing of the employers of the mechanics.

Boiler Section: The Boiler Section is responsible for the registration, inspection, accident reporting, and injury investigations surrounding boilers and pressure vessels that are subject to the provisions of the law. They are also responsible for receiving and granting permit applications for the construction or rebuilding of vessels within the state. All owners of vessels that are subject to the provisions of the law must register those devices with the Section.

Right-To-Know Section: The main mission of the Section is to register all employers within the state who use, store, or transport hazardous substances. They also perform an enforcement role by dispatching field investigators to randomly and systematically investigate employers within the state. The law provides for a Permanent Commission on Hazardous Substances whose purpose is to oversee and study the implementation of the provisions and to advise the General Assembly on how to improve the program.

Superfund Amendments and Reauthorization Act (SARA) of 1986, Title III: SARA is a Federal Act and provides for the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA). The purpose of EPCRA is to improve chemical safety and to protect public health and the environment. Under Sections 311-312 of EPCRA, facilities within the state that hold hazardous substances which fall within the parameters of the act must submit a listing of those substances as well as certain information regarding those substances. The Unit has the responsibility of implementing and reporting requirements under Sections 311-312.

The primary authoritative body responsible for implementing the requirements of EPCRA is the Rhode Island Emergency Response Commission. The reporting requirements that are being implemented by the Unit are being done to serve the Commission.

Mercantile Section (Weights and Measures): This Section's mission is to register annually all retail heating oil dealers within the state to ensure they maintain insurance coverage to pay for any oil spill cleanups for which they may be responsible. The Mercantile Section is also responsible for calibrating oil delivery truck meters and for measuring the quantity of heating oil delivered to customers.

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FINDINGS AND RECOMMENDATIONS

External Reporting

Rhode Island General Law (RIGL) 28-20-4 requires the Administrator of the Unit to organize and present to the Director by November 15 of each year a program of occupational safety and health inspections for the following fiscal year. The Director shall then submit a report with that same title to the Director of Health by December 1 of each year.

RIGL 28-25-20 requires the Administrator to make a report to the general assembly in January, biennially, setting forth the number of boilers inspected by the Division and the number of boilers reported but exempted under the provisions of the chapter.

Our interviews of management have revealed that these reports are not and have not been organized and presented by the Administrator.

Recommendation

1. Compile the particular data necessary to organize the reports, and then issue those reports required under RIGL's 28-20-4 and 28-25-20.

Management's Response: Accepted

Industrial Registration Program

Chapter 28-19 of the RIGL's requires industries within the state to register with the Unit annually, with the ultimate goal of ensuring safe and healthy working conditions. Chapter 28-19 further states that the Department is responsible for implementing the Industrial Registration program. It appears that the duties enumerated within the Chapter are consistent with the overall mission of this Division.

The Unit has a program in place known as the Safety Compliance Section; however, only for the public sector workplace within the state. The program that is being laid out in Chapter 28-19 is not being executed by the Unit, the Division, or by the Department with regards to the private sector workplace.

Management asserts that the duties enumerated within the Chapter are consistent with those of the Federal Occupational Safety and Health Administration (OSHA) within the state, and that such a program implemented by the Unit would provide an unnecessary duplication of functions, duties, and authority. Management states that for this reason the Unit has never implemented such a program for the private sector workplace within the state.

Recommendation

2. Either implement a program to carry out the purpose and obligations of RIGL 28-19 for all employment sectors within the state or request legislation be introduced to reflect the current practices of the Unit.

Management's Response: Accepted

Employment Conflict of Interest

RIGL 28-20-5 states that no employee of the Occupational Safety Unit may accept other employment that is in conflict with his or her official duties. The Unit employs three Section Chief Inspectors and other subordinate inspectors in the Safety Compliance, Elevator, and Boiler Sections. Based on the nature of the duties, responsibilities, and authority placed on this inspector position, for these employees to engage in private employment in the same discipline that they are charged with regulating within the state would result in an inherent conflict of interest.

Management has not developed policies and procedures to ensure that there are no potential conflict of interest issues with these inspectors. The signing of a statement would hold as evidence that the inspectors have knowledge of the conflict-of-interest provision, thus forcing accountability on them in the event of a violation of the provision.

Recommendation

3. Require all inspectors within the Unit to sign an acknowledgement statement informing them of the potential conflict-of-interest issues cited in RIGL 28-20-5.

Management's Response: Accepted

Financial Control Procedures

We noted that one individual is performing all aspects of the cash collection and recording process within the unit. This is a clear violation of financial controls surrounding the receipt and recording of revenue.

Recommendation

4. Duties surrounding the cash collection and recording process within the Unit should be reassigned to segregate, as much as possible, the various functions of the receipt and recording revenue.

Management's Response: Accepted

Safety Compliance Section

Occupational Safety and Health Review Board RIGL 28-20-19 establishes the Occupational Safety and Health Review Board. The review board is composed of three members appointed by the Governor and it is established to conduct hearings in all cases involving contests or the decisions of the director.

In accordance with RIGL 28-20-16, if, as a result of a safety compliance inspection or investigation, the Unit finds an employer to be in violation of the safety and health standards established by the Section, the Section will then issue to that employer a compliance order. That compliance order shall be in writing, describing the violation and shall fix reasonable time for abatement of the violation. RIGL 28-20-17 further states that after the issuance of a compliance order, the employer has fifteen working days to notify the Director that he/she wishes to contest the compliance order. Upon receiving notice of a contest of a compliance order, the Director shall immediately notify, in writing, the chairperson of the Occupational Safety and Health Review Board. The review board shall then afford an opportunity for hearing. After the hearing, the review board shall issue an order affirming, modifying, or vacating the original compliance order.

Our review of investigation case files disclosed one case where the employer had contested a compliance order issued by the Director. The employer contested the order on April 19, 2002. Management had acknowledged to us that they were aware of the contested order and that the employer had properly requested it. As of one year later, the review board still had not afforded the employer an opportunity for a hearing regarding this case.

This employer is not receiving responsive state government proceedings by the Department. It appears that the Unit is not responding in a timely manner to requests from employers who are subject to provisions of the law and who wish to contest any order issued by the Director. After a significant amount of time lapses, the facts and/or importance of the case may become obscure and dwindling. Management informed us that the reason a hearing had not been arranged was because the board lacked one of its three members.

Although the three-member board only had two members, and still does, RIGL 28-20-19 (e) states that only two members of the board are required to constitute a quorum. It also goes on to state that board action can only be taken on the affirmative vote of at least two members. If a hearing were to be held with only two board members, there is a possibility that the board may be split and no action may be taken. However, it is also more reasonable to expect that the facts would probably be clear in the case and the board would reach a unanimous vote.

Recommendations

5. The Unit should react more expeditiously in providing a hearing forum to the employers who are subject to the provisions of the law and who request those hearings. Hearings should be conducted within a reasonable period of time after orders are properly contested.

Management's Response: Accepted

Recommendations – (Cont'd)

6. The Director should notify the Governor of the vacant position on the Occupational Safety and Health Review Board and request that it be filled.

Management's Response: Accepted

Elevator Section

Annual Re-inspections RIGL 23-33-16 states that whenever in the case of any elevator or lifting device, the Chief Inspector has satisfied himself or herself, by inspection, or otherwise, that it may be safely operated, the Chief shall, upon payment of the required fee, issue to the owner a certificate of elevator inspection authorizing the operation of the elevator device. The certificate shall be renewable annually.

Several years ago the Section coordinated with the elevator mechanic companies within the state to annually submit to the Section a safety test checklist. This checklist is a comprehensive listing of test procedures that the elevator repair mechanic performs on the elevator or device. The Section would examine these test checklists as they received them to detect if there are any significant repairs or modifications occurring that would require an inspection by one of the Section's inspectors. Recently, the Chief has been relying on these mechanic-generated tests to serve as what he deems to be satisfaction as to the determination of safe operation of elevators and devices registered with the Section. If an elevator or device is due for its annual certificate of inspection renewal, the Chief will now renew the certificate based on results of the mechanics' tests rather than an inspection.

Throughout the history of the Section no certificate could be renewed for a device without an inspection performed on that device either by a Section inspector or an authorized inspector. It should be noted that authorized inspectors have not been utilized for approximately twelve years. These two categories of inspectors carry the credentials of Qualified Elevator Inspector 1 (QEI-1). At present there are only three QEI-1's in the state and they are all inspectors within the Section. The American Society of Mechanical Engineers grants QEI-1 certification. It is an extensive testing procedure and is administered nationwide. Repair mechanics do not hold this designation.

Although it appears there is leeway within the law in terms of what the Chief deems to be satisfactory as to the determination of safe operation of elevators and devices registered with the Section for the purpose of certificate renewal, RIGL 23-33-10 strictly states that existing elevators and devices shall only be inspected either by the Chief, or any of his inspectors, or any authorized inspectors. Also, the Safety Code for Elevators and Escalators published by the American Society of Mechanical Engineers prescribes that most elevators and escalators are to be inspected every six months, with all other devices to be inspected every twelve months. The code also states that elevator and device inspections may only be performed by QEI-1's. The code commission of the Unit in accordance with RIGL 23-33-2 has officially adopted this code.

Based on these facts it appears to be conclusive that the Section is renewing certificates of elevator inspection on devices without a legally-accepted or code-accepted inspections being performed on those same devices. Reliance on the elevator mechanic companies to serve as the sole source to attest as to the mechanical soundness and safe operating condition of the elevators and

devices that they get paid to perform repairs on, and probably are entered into prepaid maintenance contracts with, may lend itself to inherent conflict-of-interest issues.

Recommendation

7. Document and record the reasoning for the change in the doctrine of the Section in relying on mechanics' tests rather than inspections to serve as evidence of elevator and device safety for the purpose of renewing certificates of elevator inspection.

Management's Response: Accepted

We further noted that there are a significant number of registered elevators/lifting devices within the Section that are not being renewed on an annual basis. Whatever the means by which the Chief Inspector utilizes to satisfy himself as to safe operating condition of the elevator/lifting device, the lack of executing that means on an annual basis could post safety concerns. Also, by deferring the renewal of these certificates the Unit is foregoing the immediate revenue from the renewal fees.

Recommendation

8. Renew all elevator/lifting device certificates of inspection on an annual basis.

Management's Response: Accepted

Compliance Enforcement

During our review of elevator/lifting device owner files, we noted a clear and prevalent pattern present among the owner case files of safety code violations by elevator owners. Ten of the twelve cases tested showed instances where the Unit had cited the owners for safety code violations. In all ten cases the owners had not rectified the violations within the timeframe prescribed within the Unit's citation letter. Seven owners had the same cited violation outstanding for over a year. Six owners had more than one violation outstanding; almost all of them are outstanding for over a year. One owner had the same violation outstanding for over three years. All of these violations had been cited by the Unit at the time of the violations. Most of the violation notices had been followed up with a second notice.

RIGL 23-33-9.1 requires each owner to maintain elevators up to code requirements and RIGL 23-33-15.1 states the enforcement procedures allowed by the Unit. In the case of an observed violation, the Unit may issue a compliance order and subsequently assess a penalty if the owner has failed to correct the violation within the 15 days prescribed by law. It is clear that throughout a prolonged period of time the Unit had evidenced a substantial amount of violations that have not been corrected by the owners within the prescribed time frame and there is no evidence present that any of these owners have ever been assessed a penalty. After further inquiry we learned that the Unit has never assessed any penalty to any owner. We also learned that the Unit does not have any procedures in place to receive, examine, proceed upon, and assess penalties in the cases of uncorrected violations.

RIGL 23-33-20 allows the Unit to assess up to \$500 per day for each of the types of violations that we had discovered in the owner files. It appears that the Unit has foregone a significant amount of revenue in the past by not assessing the numerous violators that appeared to have existed. There are also safety concerns as a result of these violations.

Assessed penalties are an effective deterrent to non-compliance by those subject to the provisions and regulations of the Section. Not only would assessed penalties aid the enforcement of compliance, but established patterns of assessing penalties would become common knowledge among those subject to the provisions and that itself would act as a deterrent.

Recommendation

9. The Unit should develop and implement a program that will receive complaints, determine if those complaints necessitate a penalty assessment and proceed under the authority granted to the Administrator to assess penalties.

Management's Response: Accepted

Boiler Section

Compliance Enforcement The Section has two administrative control measures in place to enforce the permitting requirements. One control is that the Section mails out a standard informational letter to all newly licensed Pipefitter Master 1 licensees describing that a state permit is required when installing a vessel over 200,000 BTU's and/or over 120 gallons. Pipefitter Master 1 is typically the level of tradesperson licensed to install boilers/vessels. The other control method is by virtue of the formal and informal relationship the Unit has with the cities and towns within the state. All types of boiler installation, whether commercial or residential, require a construction type permit to be applied for at the local level. Indicated on all local permit applications is wording that states that if a boiler or pressure vessel is being installed that provides a heat output greater than 200,000 BTU's per hour, or a water heater or vessel that holds more than 120 gallons, the applicant must first apply for and secure a permit from the Unit prior to securing a permit from the locality. In fact, the locality will not issue a permit to an applicant under these conditions without proof of a state permit. Conversely, the locality will issue a local permit and not consider notifying the Unit if the 200,000 BTU and/or 120 gallon capacities are not being exceeded.

The problem is that the Unit is informing the cities and towns that the only state permit requirement for a boiler is any boiler or vessel greater than those particular capacities and the standard letter mailed to all licensed installers also lists that as the only requirement for which a state permit is required. Our review disclosed that the RIGL stipulated a whole other array of boilers that are also subject to the permit requirements. In accordance with RIGL 28-25-18 (13) hot water heaters under 200,000 BTU's and less than 120 gallons are exempt **except** if the vessels are installed in places of public assembly such as schools, child care centers, hospitals, nursing homes, churches, public buildings, or any other similar place of public assembly, including state and local buildings. It is presumed that vessels in these locations of any size are

subject to the provisions of the law and that there are many such vessels being installed regularly within the state. In addition to compromising public safety, the Unit is missing out on the fee for the permit to install, as well as on the registration of the vessel within the Unit's records. Registration of the vessel would make it subject to annual inspection, and inspection fee for the life of the vessel.

Recommendations

10. Notify the localities of all of the categories of boilers and vessels that are subject to the state installation and permit requirements.

Management's Response: Accepted

11. Include all of the categories of boilers and vessels that are subject to the state installation permit requirements in its standard information letter to all newly licensed Pipefitter Master 1 licensees.

Management's Response: Accepted

The Unit does not have a method in place to reasonably ensure that it is being made aware of newly opened businesses within the state that, by the nature of their business activity, would have a high probability of being subject to the provisions of the laws regarding boilers and pressure vessels. The boiler registration program conducted by the Section is a high volume program. There are approximately 25,000 registered boilers or vessels within the state.

The Right-To-Know Section (RTK) within the Unit also implements a high volume program. RTK is provided, on a monthly basis, a listing of all newly started businesses within the state. This list is extracted from a database of a totally separate program within the Department. The data is considered complete and accurate.

Any reasonable method by which the Unit is able to bring more boiler and vessel owners into compliance with the law should be considered. There are continually many new businesses starting up within the state that are subject to the provisions that are never being registered within the Unit. Aside from the public safety issues that arise from this deficiency, for all the boilers that should be registered and are not, the Unit misses out on any permit fee revenue as well as the annual inspection fee revenue for the life of the boiler.

Recommendation

12. The Boiler Section should begin to utilize the same information database resource that the RTK Section utilizes in gaining information regarding newly started businesses within the state. The Unit should be sure to tailor any information requests to indicate information that would be critical in determining if the newly started businesses are subject to the provisions of the law regarding boilers and pressure vessels, i.e., business type.

Management's Response: Accepted

Right-To-Know Section (RTK)

Compliance Enforcement There is a prevalent pattern present among the majority of the employers subject to the provisions of the Right-to-Know law of not complying with the requirement that they annually submit to the Unit a list of hazardous substances that they use, transport, store, or otherwise expose to their employees. These employees are annually registered with the Unit and are paying the required fee, but they are not submitting the required list of hazardous substances each year. We noted a high occurrence of employers who have stopped registering with the Section completely. There is no evidence that these employers have ceased to do business, and it is highly likely that they are still subject to the provisions of the law. There is no evidence present that any of these employers have been assessed a penalty or been subjected to any notification or warning by the Unit. After further inquiry we learned that the Unit has never assessed any penalty to any employer. We further learned that the Unit does not have any procedures in place to receive, examine, process, and assess penalties in the cases of found violations.

RIGL 28-21-17 allows the Department to impose a fine of no more than \$5,000 for every day that a violation exists to any employer who intentionally violates the Right-to-Know Act provisions. The possible effects of not enforcing compliance are compromising public safety and the loss of revenue in the form of penalties, and future registration renewal fees.

Assessed penalties are an effective deterrent to non-compliance by those subject to the provisions and regulations. Not only would assessed penalties aid the enforcement of compliance, but established patterns of assessing penalties would become common knowledge among those subject to the provisions and that itself would act as a deterrent.

Recommendation

13. The Unit should develop and implement a program that will ensure compliance with RIGL 28-21-17.

Management's Response: Accepted

Permanent Commission on Hazardous Substances

RIGL 28-21-21 creates a permanent commission on hazardous substances, the members of which are appointed by the Speaker of the House of Representatives and by the President of the Senate. Its purpose is to oversee and study the implementation of the Right-to-Know provisions of the RIGL and to advise the general assembly with respect to the provisions. The commission is to consist of 17 members and shall submit a report to the general assembly each year. We learned that the commission has neither convened nor been functioning since the time that the law was revised in 1987.

The sensitivity, volatility, and the composition of many of the hazardous and toxic substances included in the State's Hazardous Substance List and the potential health effects these substances pose to people are issues that need to be managed by expert consultants, typically

those individuals who would ideally comprise a hazardous substance commission, and not by laypersons. By not having a commission of experts advising the Unit regarding these issues appears to pose a health risk and hazard to the workers and general public.

Recommendation

14. Notify the Speaker of the House of Representatives and the President of the Senate to begin the procedures necessary to assemble the seventeen member permanent commission of hazardous substances as prescribed by law. Emphasis should be to appoint individuals with levels of expertise in the area of hazardous and toxic substances.

Management's Response: Not Accepted

Hazardous Substance List

In accordance with RIGL 28-21-13 (a), "The Department shall establish and maintain the list of designated substances and the list shall be reviewed at intervals of six (6) months." At the time of the creation of the RTK Rhode Island General Laws, the Department had compiled a hazardous substance list. The list serves as a guide to illustrate all of the hazardous/toxic substances that apply under the statute.

The presumption surrounding this requirement is that the chemical and health industries are continually learning more about hazardous substances and the dangers they pose to humans and to the environment. Six-month reviews of the list would allow for additions, deletions, and any adjustments to it that is deemed necessary, based on changes of categorizations of substances used in the industry. Periodic adjustments to the list may also be necessary due to substances having become newly allowed or prohibited by enactment of law. We learned that this list has not been reviewed since 1985.

Recommendation

15. Update the hazardous substance list as soon as possible and at reasonable intervals thereafter.

Management's Response: Accepted

Chemical Identification Lists Central File

RIGL 28-21-13 (a) further requires the Unit to keep a central file of annually updated chemical identification lists per employer. The central file must be cross-referenced by chemical substance to facilitate the identification of all employers using a particular designated substance. Further, the Unit shall assign chemical abstract (CAS) numbers to the designated substances to facilitate comparisons with employers' list from other states. The central file (database) input function portion of fulfilling this requirement has not been done for the past 15 years.

The presumption surrounding this requirement is that the Department will have a database of all the hazardous substances that are in use, by industry, within the state on a current basis. This data can be tabulated and presented in various forms to facilitate a need for that information, for perhaps reactionary or preventive actions, at any time.

Recommendation

16. The Unit should keep a central file of annually updated chemical identification lists per employer, cross-reference the lists by chemical substance to facilitate the identification of all employers using a particular designated substance. Further, the Unit should assign chemical abstract series (CAS) numbers to the designated substances to facilitate comparisons with employers' lists from other states.

Management's Response: Not Accepted

Hazardous Substances Inspection Report

The primary element in the internal control over field inspections being conducted by the Section investigators is the Hazardous Substances Inspection Report. The report does not include any provision for supervisory approval by the Unit Chief. We noted that there was no evidence in the case files that the Unit Chief approved or acknowledged the results of any field investigations. This is a weakness in the control over the field investigation process.

Without a provision for supervisory control within the investigative process, there exists a risk that an investigation may be conducted and determinations made and revealed to those investigated that are unauthorized by management.

Recommendation

17. Develop a new Hazardous Substance Inspection Report that includes a provision for supervisory approval or management's acknowledgement of the disposition of the case.

Management's Response: Accepted

Mercantile Section (Weights and Measures)

Standardized Weights and Measures Although this Section is currently performing a very limited number of functions, it was originally created to implement a sophisticated program of weights and measures. The program was designed to:

- Receive standard weights and measures from the federal government;
- Maintain those standards in a highly preserved, fireproof environment, and to maintain an inventory of such standards;

- Use those standards to certify city and town sealers; and
- Maintain a certified metrology laboratory utilizing the standard weights and measures.

The standard weights and measures were received by the state in 1976. They consist of a cache of highly sophisticated and precise weights, standards, and measuring devices. These standards are official second order standards and are directly measured off from official first order standards of the federal government. Our interviews with management revealed the high value of these standards. Estimates place their combined value at between \$250,000 and \$500,000.

RIGL 47-1-2 requires the Director to keep the standards received from The Federal Government in a suitable, fireproof place provided by the state and that they are kept in perfect order and repair. It is presumed that these stringent storage requirements are due to the general knowledge of the extremely high value and exclusivity of these standards.

Currently, these standards are stored in a location that has neither fireproofed nor humidity control elements. They are stored in the building that the Department of Labor previously occupied and moved from five years ago. The state has not been in a rental contract with the building owners since then. Also, we discovered that some of the standards are in the custody of the moving company the Department contracted with when they moved from the previously occupied building on Manton Ave.

The statute further requires the Director to keep a complete list of those standards received by the state from the Federal Government and to take a receipt for those standards from his or her successor in office. The intent of the law appears to be to have a record of the chain of custody of the standards. There is no such list and there is no record of chain of custody between the various Directors since the time these standards were acquired. The Director should note the importance of providing a chain of custody for these standards and should set a policy within his office to do so.

It appears that the Department has lost control over the preservation and security of those standards resulting in the probability of the state losing an expensive and extremely exclusive asset.

Recommendations

18. Assemble all of the standards issued from the Federal Government and store them in a suitable, secure, fireproofed place. If necessary, repair any damage that has occurred to these standards.

Management's Response: Not Accepted

19. Compile a complete listing of all of the standards on hand.

Management's Response: Accepted

It is obvious that the department and the state have not been making use of the standards. If these standards are found to be present and in good working order, the Department should perhaps seek out other Departments or Agencies within the State that could utilize the standards. Possible alternative uses could be the Department of Health in the measuring of foods, medicines, and chemicals, or perhaps the state morgue. Considering the value of exclusivity of these standards, it appears to be unreasonable to allow these standards to sit idly for years.

Recommendation

20. Determine whether State Agencies could utilize the standards for possible alternative uses. The Department should be certain to execute a proper chain of custody if it should transfer the possession and use of the standards.

Management's Response: Accepted

Tank Vehicles

RIGL 4-8-5 requires the Department of Labor and Training to perform tests on every tank vehicle (gasoline and heating oil) used for transportation over the highways of the state. The tank vehicles are to be tested and sealed at least every three years for capacity and each year for meters. Loading rack meters must also be tested every year. Of these testing requirements, the only thing that the Department currently performs is the testing of oil delivery truck meters.

Recommendation

21. Perform the required testing and sealing of every tank vehicle as prescribed by law.

Management's Response: Accepted

Utility Meters

In accordance with RIGL 47-16-1, the Director of the Department is authorized and directed to conduct spot tests of all metering devices used in the sale of electricity, water, or natural gas within the state at least once a year. Our review disclosed that the Section is not performing such spot testing.

Recommendation

22. Comply with the statute.

Management's Response: N/A

Superfund Amendments and Reauthorization Act (SARA III)

Economy and Efficiency There is a section within the Unit that is unrelated to any other function or program within the Unit or the Division. It operates as a component of a completely separate autonomous body that exists outside of the Department. The section is the SARA III Section and the autonomous body is the Rhode Island State Emergency Response Commission (the Commission). The Commission is responsible for implementing, at the state level, the provisions of the Federal Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). According to EPCRA, the purpose of the Commission is to "improve chemical safety and to protect public health and the environment." EPCRA states that the following provisions will help the Commission develop a broad perspective of chemical hazards for the entire community. Following is a brief description of the functions of the four provisions:

1. Emergency planning: Emergency response plans contain information that community officials can use in the time of a chemical accident. Planning should include emergency response procedures, evacuation plans, and training for emergency responders.
2. Emergency release notification: Facilities must immediately notify the commission in the case of an accidental release of a hazardous substance into the environment.
3. Hazardous chemical storage reporting requirements: Facilities that have hazardous substances must report their inventory of the substances to the Commission.
4. Toxic chemical release inventory: Facilities must report releases and other waste management of toxic chemicals. This is not for accidental releases; it is to monitor controlled releases into the environment as a result of manufacturing or other processes.

Currently, the Division of the State Fire Marshall performs the emergency planning and emergency release notification functions on behalf of the Commission; the Department of Environmental Management performs the toxic chemical release inventory, and the Department of Labor and Training is implementing the hazardous chemical storage reporting requirements. The Sara III Section within the Unit is performing this function within the Department.

An Executive Order issued by the Governor's Office in 1999 sets forth this division of responsibility in implementing the provisions of EPCRA.

Three separate department or divisions are implementing the four provisions of EPCRA which must be implemented by the Commission. This appears to be an inefficient manner for the Commission to accomplish its mission. It would appear reasonable to have as many of the provisions being implemented by the Commission under the responsibility of the fewest departments or divisions as possible.

Since the purpose of EPCRA is to improve chemical safety and to protect public health and the environment, and its major provisions are emergency response, substance reporting, and environmental protection, it appears that given the missions and roles in state government of

the Department, the Department of Environmental Management, and the Division of the State Fire Marshall, that the Department is the least suitable of the three for accomplishing this purpose and for implementing these provisions.

Given the duties that are being performed by the SARA III Section on behalf of the Commission, the Section is not required to and it does not conduct any information exchange or overlapping of functions or duties with any other section of or unit within the Division or the Department.

Recommendation

23. The Director should address the Governor's Office regarding the Executive Order that sets forth the division of responsibility in implementing the provisions of EPCRA. In his address, the Director should strive to revise the Order to have the hazardous chemical storage reporting function of EPCRA shifted from the Department to one of the other departments/divisions implementing the other three functions of EPCRA. This is to be done in an effort to bring about better economy and efficiency to the operation of the Commission.

Management's Response: Accepted



Donald L. Carcieri
Governor
Marvin D. Perry
Director

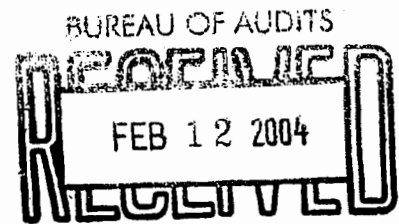
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Labor and Training

Center General Complex
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Cranston, RI 02920-4407

Telephone: (401) 462-8000
TDD: (401) 462-8006

February 5, 2004



Mr. Frank J. Collaro, CFE, CGFM
Acting Chief
Bureau of Audits
Department of Administration
One Capitol Hill
Providence, RI 02908

Dear Mr. Collaro:

In response to Shirley Egan's memo dated November 12 , 2003, the following are the Department of Labor & Training's response to the findings and recommendations of the performance audit on the Occupational Safety Program.

1) Compile the particular data necessary to organize the reports, and then issue those reports required under RIGL 28-20-4 and 28-25-20.

ACCEPTED

The Director is informed periodically during the fiscal year of the programs used for inspection procedures. These procedures are set and drafted regularly and remain the same throughout the fiscal year. Matters within the health department's jurisdiction are dealt with accordingly. The division will proceed to draft a report in the future on November 15th and December 1st of each year.

2) Either implement a program to carry out the purpose and obligations of RIGL 28-19 for all employment sectors within the state or request legislation to be introduced to reflect the current practices of the Unit.

ACCEPTED

Chapter 28-20-19 has been repealed through legislation.

3) Require all inspectors within the Unit to sign an acknowledgement statement informing them of the potential conflict-of-interest issues cited in RIGL 28-20-5.

ACCEPTED

The acknowledgement statement is being processed. Signatures will be complete by the end of the year.

4) Duties surrounding the cash collection and recording process within the Unit should be reassigned to segregate, as much as possible, the various functions of the receipt and recording revenue.

ACCEPTED

The process will be reassigned to institute a function that will provide a more segregated procedure within three (3) months.

5) The Unit should react more expeditiously in providing a hearing forum to the employers who are subject to the provisions of the law and who request those hearings. Hearings should be conducted within a reasonable period of time after orders are properly contested.

ACCEPTED

Hearing requests are now being processed within a reasonable time period.

6) The Director should notify the Governor of the vacant position on the Occupational Safety and Health Review Board and request that it be filled.

ACCEPTED

This position has been filled.

7) Document and record the reasoning for the change in the doctrine of the Section in relying on mechanics' tests rather than inspections to serve as evidence of elevator and device safety for the purpose of renewing certificates of elevator inspection.

ACCEPTED

The reasoning for the use of elevator company employees (mechanics) is due to the elimination of three (3) state inspectors within the unit.

8) Renew all elevator/lifting device certificates of inspection on an annual basis.

ACCEPTED - Due to the retirement of two (2) elevator inspectors that have not been replaced, we have a backlog of issuing certificates in a timely manner.

9) The Unit should develop and implement a program that will receive complaints, determine if those complaints necessitate a penalty assessment and proceed under the authority granted to the Administrator to assess penalties.

ACCEPTED - We have started to assess fines in accordance with the law.

The elevator section will start monitoring the violation status in order to assess the fine schedule.

10) Notify the localities of all of the categories of boilers and vessels that are subject to the state installation and permit requirements.

ACCEPTED

We will notify the city and town mechanical inspectors that they are to inform us when hot water heaters are placed in establishments of public assembly.

11) Include all of the categories of boilers and vessels that are subject to the state installation permit requirements in its standard information letter to all newly licensed Pipefitter Master I licenses.

ACCEPTED

We will notify the installers that under the law a permit is required in places of public assembly.

12) The Boiler Section should begin to utilize the same information database resource that the RTK Section utilizes in gaining information regarding newly started businesses within the state. The Unit should be sure to tailor any information requests to indicate information that would be critical in determining if the newly started businesses are subject to the provisions of the law regarding boilers and pressure vessels, i.e. business type.

ACCEPTED

This will be accomplished by receiving monthly reports from the Right-to-Know section .

13) The Unit should develop and implement a program that will ensure compliance with RIGL 28-21-17.

ACCEPTED

Chapter 28-21-13(b) Upon the finding of a violation arising from an inspection, the employer shall inform his employees and immediately undertake measures for the safety of the employees. The employer shall have ninety (90) days from the date of the finding of a violation to comply with the remaining provisions of this chapter. We are making every possible effort to instill the requirement of employers providing a list of the hazardous substances. Having only two inspectors causes great difficulties when trying to undertake all sections of the law when we must prioritize for the safety of the general public.

14) Notify the Speaker of the House of Representatives and the President of the Senate to begin the procedures necessary to assemble the seventeen member permanent commission of hazardous substances as prescribed by law. Emphasis should be to appoint individuals with levels of expertise in the area of hazardous and toxic substances.

NOT ACCEPTED

This commission has been repealed through legislation 2003.

15) Update the hazardous substance list as soon as possible and at reasonable intervals thereafter.

ACCEPTED

List is in the process of being updated.

16) The Unit should keep a central file of annually updated chemical identification lists per employer; cross-reference the lists by chemical substance to facilitate the identification of all employers using a particular designated substance. Further, the Unit should assign a chemical abstract series (CAS) numbers to the designated substances to facilitate comparisons with the employers' lists from other states.

NOT ACCEPTED

This section of law will be repealed in its entirety. Cross-referencing by C.A.S. number has no benefit to the Right-to-Know Unit.

17) Develop a new Hazardous Substance inspection report that includes a provision for supervisory approval or management's acknowledgement of the disposition of the case.

ACCEPTED

The inspection report will include a provision for supervisory approval showing acknowledgement of the disposition of the case.

18) Assemble all of the standards issued from the Federal Government and store them in a suitable, secure, fireproofed place. If necessary, repair any damage that has occurred to these standards.

NOT ACCEPTED

This equipment is obsolete, antiquated, and over twenty-seven (27) years old. We are in the process of contacting the state surplus center.

19) Compile a complete listing of all of the standards on hand.

ACCEPTED

This recommendation will be complied with.

20) Determine whether State Agencies could utilize the standards for possible alternative uses. The Department should be certain to execute a proper chain of custody if it should transfer the possession and use of the standards.

ACCEPTED

This recommendation will be complied with.

21) Perform the required testing and sealing of every tank vehicle as prescribed by law.

ACCEPTED

The function requiring testing and sealing of every tank vehicle as required by law is now privatized (See Rules and Regulations Filing Form attached).

22) Comply with the statute.

N/A

This function has been moved to the Public Utilities Commission (PUC) who will be performing these spot checks.

23) The Director should address the Governor's Office regarding the Executive Order that sets forth the division of responsibility in implementing the provisions of EPCRA. In his address, the Director should strive to revise the Order to have the hazardous chemical storage reporting function of EPCRA shifted from the Department to one of the other department/divisions implementing the other three functions of EPCRA. This is to be done in an effort to bring about better economy and efficiency to the operation of the Commission.

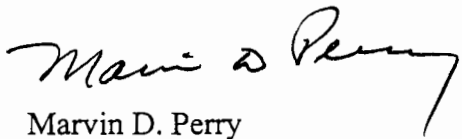
ACCEPTED

The Director plans on addressing the Governor's Office to recommend that this function be moved to one of the departments implementing the other three functions of EPCRA.

With all of the above changes, Occupational Safety Program has either complied with or will comply with the recommendations of the Bureau of Audits.

Should you have any questions, or require any additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marvin D. Perry".

Marvin D. Perry
Acting Director
RI Department of Labor & Training